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November 2, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 17, 2007

Case Number: TSO-0516

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." <sup>1</sup> For the reasons set forth below, I conclude that the individual's security clearance should be restored.

## I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor and was granted a security clearance in connection with that employment. In May 2004, the individual was arrested for Driving Under the Influence (DUI). In May 2006, the individual was summoned for an interview with a Personnel Security Specialist from the DOE's local security office, and the 2004 arrest was the primary subject of that Personnel Security Interview (PSI). After the PSI, the individual was referred to a local psychiatrist for a DOE-sponsored evaluation. This evaluation took place in September 2006. The psychiatrist (hereinafter referred to as "the DOE psychiatrist") diagnosed the individual as suffering from Alcohol Abuse, and provided a written report to the local security office setting forth this diagnosis. <sup>2</sup>

After reviewing all of the information in the individual's personnel security file, including the results of the interview and the psychiatric evaluation, the local security office determined that derogatory information existed that cast into doubt the individual's continued eligibility for a security clearance. The manager of the local DOE office informed the individual of this determination in a letter that

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<sup>1</sup>An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

<sup>2</sup> As discussed *infra*, in Section IV, the DOE psychiatrist was not provided with the transcript of the PSI or the individual's police records prior to the evaluation.

set forth in detail the DOE's security concern and the reasons for that concern. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The local security office forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer. The DOE introduced eight exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist at the hearing.

## II. THE NOTIFICATION LETTER

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraph (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Paragraph (j) pertains to information indicating that the individual "has been, or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse." As support for this allegation, the Letter cites the individual's three DUI arrests, two in 1987 and one in May 2004. The Letter also refers to the diagnosis of the DOE psychiatrist that the individual suffers from Alcohol Abuse, with insufficient evidence of reformation or rehabilitation. DOE Exhibit 8.

## III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

#### IV. FINDINGS OF FACT AND ANALYSIS

As set forth above, the DOE's security concerns relate to paragraph (j) of the personnel security regulations. As there was no claim or evidence presented in the Notification Letter or at the hearing that the individual is a user of alcohol habitually to excess or that he has been diagnosed as alcohol dependent, the DOE's sole concern is that he was diagnosed by the DOE psychiatrist as suffering from Alcohol Abuse.

At the hearing, however, the DOE psychiatrist testified that when he evaluated the individual in September 2006, he had not received the transcript of the individual's PSI or the records of the individual's arrests, Hearing Transcript (Tr.) at 9, materials that DOE psychiatric consultants would normally have considered in cases of this sort. After reviewing these materials, the DOE psychiatrist concluded that his original diagnosis was in error. Specifically, he found that the individual did not, at the time of his 2006 evaluation or at the time of the hearing, suffer from Alcohol Abuse or any other alcohol use disorder. Tr. at 8, 15. He indicated that his original diagnosis was based largely on his interview with the individual and his skepticism about certain statements made by the individual regarding the number of drinks he consumed prior to his 2004 arrest and the circumstances surrounding the field sobriety test to which he was subjected at that time. Tr. at 10-11. However, after obtaining additional information from the PSI, and researching the effects of alcohol on people of advanced years and the sobriety testing procedures of the local police, the DOE psychiatrist concluded that his original diagnosis was incorrect. *Id.* He further concluded that the individual does not pose "a risk of a lapse of judgement or reliability because of alcoholism." Tr. at 12.

I have thoroughly reviewed the record in this matter, and I have found no reason to disagree with the DOE psychiatrist's revised evaluation. I therefore conclude that there are no valid security concerns under paragraph (j) regarding the individual's eligibility for access authorization.

#### V. CONCLUSION

For the reasons set forth above, I find that restoring the individual's security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual's clearance should be restored. The Manager of the DOE Operations Office or the Office of Security may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer  
Hearing Officer  
Office of Hearings and Appeals

Date: November 2, 2007

